

Jeroen Walstra - 12/15/03

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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND

BRUCE ALLEN LILLER, et al

Plaintiffs

vs.

#MJG 02-CV-3390

ROBERT KAUFFMAN

Defendants and
Third Party Plaintiffs

vs.

ROGER LEE HELBIG

Third Party Defendant

The telephonic deposition of JEROEN
WALSTRA was held on Monday, December 15, 2003,
commencing at 2:00 p.m., at the Law Offices of Lord &
Whip, 36 South Charles Street, 10th Floor, Baltimore,
Maryland, 21201, before Paula J. Eliopoulos, Notary
Public.

REPORTED BY: Paula J. Eliopoulos

EXHIBIT

tabbles

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<p style="text-align: right;">2</p> <p>1 APPEARANCES:</p> <p>2 ARNOLD F. PHILLIPS, ESQUIRE</p> <p>3 (Via Telephone)</p> <p>4 On behalf of Plaintiffs</p> <p>5 JENNIFER S. LUBINSKI, ESQUIRE</p> <p>6 On behalf of Defendant</p> <p>7</p> <p>8</p> <p>9</p> <p>10</p> <p>11</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p>	<p style="text-align: right;">4</p> <p>1 A Yeah.</p> <p>2 Q Okay.</p> <p>3 A I don't have it in front of me, but I did</p> <p>4 see it.</p> <p>5 MS. LUBINSKI: I'm going to mark that as</p> <p>6 Number 1.</p> <p>7 (Walstra Deposition Exhibit Number 1 was</p> <p>8 marked for purposes of identification.)</p> <p>9 Q Do you have a CV?</p> <p>10 A Yes.</p> <p>11 Q Perhaps after we conclude the deposition,</p> <p>12 would you be able to fax that to me?</p> <p>13 A Yes, I will.</p> <p>14 Q And I'll give you that number --</p> <p>15 A Okay.</p> <p>16 Q -- once we conclude.</p> <p>17 Have you published anything, Mr. Walstra?</p> <p>18 A Yes. I have.</p> <p>19 Q Have you published anything which you</p> <p>20 would consider relevant to the opinions you're going</p> <p>21 to express today?</p>
<p style="text-align: right;">3</p> <p>1 STIPULATION</p> <p>2 It is stipulated and agreed by and between</p> <p>3 counsel for the respective parties that the filing of</p> <p>4 this deposition with the Clerk of Court be and the</p> <p>5 same is hereby waived.</p> <p>6 -----</p> <p>7 Whereupon,</p> <p>8 JEROEN WALSTRA,</p> <p>9 called as a witness, having been first duly sworn to</p> <p>10 tell the truth, the whole truth, and nothing but the</p> <p>11 truth, was examined and testified as follows:</p> <p>12 EXAMINATION BY MS. LUBINSKI</p> <p>13 Q It's Mr. Walstra; is that right? Not</p> <p>14 Doctor?</p> <p>15 A That is correct.</p> <p>16 Q Doctor, I have a copy of your --</p> <p>17 A Mister.</p> <p>18 Q I'm sorry.</p> <p>19 Mr. Walstra, I have a copy of your Amended</p> <p>20 Notice To Take Deposition.</p> <p>21 Have you had an opportunity to see that?</p>	<p style="text-align: right;">5</p> <p>1 A Well, it's relevant with respect to</p> <p>2 forensic economics. Is it relevant directly for this</p> <p>3 case? I don't think so.</p> <p>4 Q Where did you obtain your undergraduate</p> <p>5 degree?</p> <p>6 A At the Academy for Physical Education in</p> <p>7 The Hague, and that's in The Netherlands.</p> <p>8 Q Are you originally from The Netherlands?</p> <p>9 A Yes, I am.</p> <p>10 Q And where did you obtain your graduate</p> <p>11 degree?</p> <p>12 A At Webster University, St. Louis,</p> <p>13 Missouri, 1990.</p> <p>14 Q And I neglected to ask when you obtained</p> <p>15 your undergraduate degree?</p> <p>16 A That was in 1984.</p> <p>17 Q Was that in economics?</p> <p>18 A The undergraduate degree?</p> <p>19 Q Correct.</p> <p>20 A No. That was in physical education.</p> <p>21 Q Okay.</p>

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<p style="text-align: right;">6</p> <p>1 A And then I have a <u>certificate of Dutch in</u> 2 <u>Dutch law in economics from the University of</u> 3 <u>F-U-T-R-E-C-H-T, 1988.</u> 4 Q What caused you to go from studying 5 physical education to economics? 6 A My -- actually my degree is in marketing 7 Q Which degree is in marketing? 8 A The Master's Degree 9 Q I understand. Okay. 10 From Webster University? 11 A Correct. 12 Q So, you hold a Master's Degree in 13 marketing? 14 A Yes. 15 Q Other than the certificate which you hold 16 in Dutch law in economics -- 17 A I did what they called <u>post Master's</u> 18 <u>credit at Melthurst (phonetic) College in 1997, which</u> 19 <u>related to vocational economic analysis and testimony.</u> 20 And I have a -- I'm a <u>certified earnings</u> 21 <u>analyst per July 18th, 2002, and that is through the</u></p>	<p style="text-align: right;">8</p> <p>1 with respect to economics? 2 A No, I don't. 3 Q Would you give me, please, your employment 4 history beginning with 1990? 5 A <u>1990? I started working for 3-M Health</u> 6 <u>Care. That's what they call it: Marketing</u> 7 <u>coordinator for surgical products.</u> 8 At the same time, I was adjunct professor 9 for Webster University in The Netherlands where they 10 had a campus and taught market forecasting. 11 And then I continued to work for 3-M until 12 1994 in the Netherlands in Europe. 13 And then I moved to the United States in 14 19 -- end of 1994, Christmas, <u>1994, to work for 3-M.</u> 15 <u>International Business Development.</u> There I worked as 16 a -- worked in planning for exporters and 3-M 17 subsidiaries. 18 Then I moved to the Pittsburgh area after 19 quitting my job at 3-M and became self-employment. 20 because I was already involved in some of the similar 21 activities that we had in terms of forecasting</p>
<p style="text-align: right;">7</p> <p>1 <u>professional association named AREA, and that's the</u> 2 <u>American Rehabilitation Economics Association.</u> 3 Q And did you have to take an exam -- 4 A Yes. 5 Q -- of some kind to obtain that 6 certification? 7 A Yes. 8 Q When did you take that exam? 9 A On July -- no. That must have been end of 10 May in 2002. 11 Q Is that a written exam? 12 A Yes. It's an eight-hour exam. 13 Q And is the examination administered by 14 the -- by AREA? 15 A Yes. 16 Q Did you pass that exam on your first 17 attempt? 18 A Yes. 19 Q Other than that certificate, which is a 20 certified earnings analyst, and your certificate in 21 Dutch law in economics, do you hold any other degrees</p>	<p style="text-align: right;">9</p> <p>1 earnings through an insurance company, actually, in 2 The Netherlands originally. 3 And with my business partner, Charles 4 Cohen, I set up this consulting business, and we 5 started writing reports for attorneys in 1997 6 regarding losses of earnings in personal injury cases 7 and medical malpractice cases. 8 Q So, did you leave 3-M in 1997? 9 A Actually I left in 1996. In the meantime, 10 I did also work with the United Marketing Group, which 11 is a consulting -- small consulting firm. 12 And I sometimes still do things for them 13 on a free-lance basis. 14 Q What kind of work do you do for them? 15 A It's consulting with small businesses 16 looking at market forecasting, sales development, 17 market share development, that kind of stuff, whatever 18 comes in as a job. 19 Q So, just for my own edification, for 20 example, if a company were interested in getting into 21 a different line of business, they might come to you</p>

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<p style="text-align: right;">10</p> <p>1 to determine whether or not that would be something</p> <p>2 that would be profitable?</p> <p>3 A Correct. Right. Some kind of assessment</p> <p>4 that how many units could you -- would you be able to</p> <p>5 sell into the future and what would the profit be,</p> <p>6 yeah.</p> <p>7 Q And in connection with that kind of work,</p> <p>8 have you ever worked within the construction industry?</p> <p>9 No, not that I remember. Not a whole lot,</p> <p>10 no.</p> <p>11 Q When you say not a whole lot, do you think</p> <p>12 that you may have done some?</p> <p>13 A Well, some products, but that's a long</p> <p>14 time ago. I don't even -- I remember that I had to do</p> <p>15 something in that area with the value of some product,</p> <p>16 but I do not really remember any more what I did for</p> <p>17 them right now.</p> <p>18 Q Was that with 3-M or as a --</p> <p>19 A No. No. That was consulting for United</p> <p>20 Marketing Group.</p> <p>21 Q Okay.</p>	<p style="text-align: right;">12</p> <p>1 Q And you and Dr. Cohen have been in</p> <p>2 business together since 1997; is that correct?</p> <p>3 A Correct.</p> <p>4 Q Have you ever done any review work for</p> <p>5 Mr. Phillips' firm before?</p> <p>6 A No. This was the first.</p> <p>7 Q Do you review or prepare earnings</p> <p>8 evaluations or earnings capacity reports for anyone</p> <p>9 other than Dr. Cohen?</p> <p>10 A I do not understand the question exactly.</p> <p>11 Q Well, let me take a few steps back to see</p> <p>12 if we can make it clearer.</p> <p>13 A Yeah.</p> <p>14 Q You prepared a lost earning capacity</p> <p>15 report for Bruce Liller and Michael Liller; is that</p> <p>16 correct?</p> <p>17 A Uh huh. Yeah.</p> <p>18 Q How is it that you came to do that?</p> <p>19 A We introduced our services to attorneys</p> <p>20 that we can do that as a team. So, he does the</p> <p>21 vocational and sometimes psychological part, and I do</p>
<p style="text-align: right;">11</p> <p>1 A Further, I teach. Maybe you want to know</p> <p>2 that too.</p> <p>3 Q Okay.</p> <p>4 A At Chatham College. And I teach marketing</p> <p>5 and business courses. And I also teach as an adjunct</p> <p>6 at Point Park College, now called Point Park</p> <p>7 University, doing the same thing.</p> <p>8 Q Marketing?</p> <p>9 A Marketing and international business;</p> <p>10 yeah.</p> <p>11 Q Are you teaching undergraduate or graduate</p> <p>12 students?</p> <p>13 A Both.</p> <p>14 Q How did you meet Dr. Cohen?</p> <p>15 A Through my wife. My wife is from</p> <p>16 Pittsburgh, and she knew him. Their families are</p> <p>17 close.</p> <p>18 Q Did Dr. Cohen indicate to you that he was</p> <p>19 looking for someone with your kind of expertise?</p> <p>20 No. No. No. You know, he's my</p> <p>21 father-in-law, to be precise.</p>	<p style="text-align: right;">13</p> <p>1 the economic forecasting in a case.</p> <p>2 Q When Mr. Phillips initially contacted your</p> <p>3 office, did he contact you or Dr. Cohen?</p> <p>4 A I do not remember that, if he contacted</p> <p>5 him or me. I don't know.</p> <p>6 Q Typically when you prepare reports of the</p> <p>7 kind that you prepared for the Lillers, do you prepare</p> <p>8 them independently based upon your own analysis, or do</p> <p>9 you prepare them in consultation with Dr. Cohen?</p> <p>10 A We do them together mostly. Like in this</p> <p>11 case, we interviewed both Michael and Bruce together.</p> <p>12 Q So, you were both in the room --</p> <p>13 A Correct.</p> <p>14 Q -- with the Lillers together?</p> <p>15 A Correct.</p> <p>16 Q Were both of the Lillers together in the</p> <p>17 room while you were interviewing them?</p> <p>18 A No.</p> <p>19 Q Just so that we have a clear transcript,</p> <p>20 Mr. Walstra, I understand that sometimes you</p> <p>21 anticipate what my question is going to be and you're</p>

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<p style="text-align: right;">18</p> <p>1 Q Do you hold any licenses --</p> <p>2 A No.</p> <p>3 Q -- other than your certification?</p> <p>4 A Just the certification that we talked on</p> <p>5 before, about before.</p> <p>6 Q Have you ever provided testimony at trial</p> <p>7 as an expert witness?</p> <p>8 A Yes, I have.</p> <p>9 Q On how many occasions?</p> <p>10 A Four.</p> <p>11 Q Were any of those cases in Maryland?</p> <p>12 A No.</p> <p>13 Q Where were they?</p> <p>14 A Pennsylvania.</p> <p>15 Q And in those cases, had you been retained</p> <p>16 by the plaintiff or the defendant?</p> <p>17 A Plaintiff.</p> <p>18 Q Do you recall the names of the firms who</p> <p>19 retained you?</p> <p>20 A Yes. Do you want to have them?</p> <p>21 Q Please.</p>	<p style="text-align: right;">20</p> <p>1 A Okay.</p> <p>2 Q Do you have that report in front of you?</p> <p>3 A Yes.</p> <p>4 Q Is that the only report you've prepared</p> <p>5 with respect to this case?</p> <p>6 A Yes.</p> <p>7 Q Other than this report, what do you have</p> <p>8 in your file with respect to Bruce Liller?</p> <p>9 A I have Dr. Cohen's report. I have my</p> <p>10 notes. I have the tax returns.</p> <p>11 Q Which tax returns do you have?</p> <p>12 A Let me see. 2002, 2000, 1999 and 1998.</p> <p>13 I'm missing 2001.</p> <p>14 Q And if you could, Doctor, when you fax me</p> <p>15 over a copy of your CV, I'd like to also have a copy</p> <p>16 of your notes.</p> <p>17 A Okay.</p> <p>18 Q What kind of information were you</p> <p>19 interested in obtaining from Bruce Liller which would</p> <p>20 enable you to provide the opinions that we're going to</p> <p>21 discuss in a moment?</p>
<p style="text-align: right;">19</p> <p>1 A McClain, John McClain, M-c-C-L-A-I-N,</p> <p>2 Leger, Andrew Leger, L-E-G-E-R, James Herb, H-E-R-B,</p> <p>3 and John Goodrich, G-O-O-D-R-I-C-H.</p> <p>4 Q Do you know the results of any of those</p> <p>5 trials, whether or not there was a plaintiff or a</p> <p>6 defense verdict?</p> <p>7 A I know that the John Goodrich case was a</p> <p>8 plaintiff verdict.</p> <p>9 Q Not sure about the rest of them?</p> <p>10 A I'm not sure about the rest of them.</p> <p>11 Well, yeah, actually the McClain case was also a</p> <p>12 plaintiff verdict. I know that.</p> <p>13 Q Have you ever provided any vocational</p> <p>14 assistance to Pennsylvania's workers' compensation</p> <p>15 board, whatever they may call themselves?</p> <p>16 A No. I don't do vocational work. So, no.</p> <p>17 (Walstra Deposition Exhibit Number 2 was</p> <p>18 marked for purposes of identification.)</p> <p>19 Q Let's turn now to your reports. Let's</p> <p>20 start with your report for Bruce Liller. I have a</p> <p>21 date on that report of September 17th, 2003.</p>	<p style="text-align: right;">21</p> <p>1 A Well, his date of birth, the date of the</p> <p>2 accident is crucial, his education, his past work</p> <p>3 history, his earnings, where he earned that money and</p> <p>4 what his problems are.</p> <p>5 Q And in that regard, feel free to refer to</p> <p>6 your report obviously, what information did you obtain</p> <p>7 from Bruce Liller?</p> <p>8 A Well, that's the information we obtained</p> <p>9 from Bruce Liller. So, I'm not sure -- do you want to</p> <p>10 see where I put that or --</p> <p>11 Q Well, I'd like you to elaborate on your</p> <p>12 report, if you could.</p> <p>13 A Okay. So, Bruce is a 20-year-old --</p> <p>14 28-year-old male, and he had an accident on 4/17/02.</p> <p>15 His birth date, date of birth was 3/9/1975.</p> <p>16 He is -- since returning to work on 12/02,</p> <p>17 he's earning \$15 per hour, and he has an assistant who</p> <p>18 costs \$8 per hour to help him do the physical tasks.</p> <p>19 that he can no longer perform.</p> <p>20 He reports that he started working</p> <p>21 full-time since February, '03. In his job, he did not</p>

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<p style="text-align: right;">22</p> <p>1 receive fringe benefits. He's a high school graduate.</p> <p>2 And after the accident, he did not work for eight</p> <p>3 months.</p> <p>4 Now -- so, at the time of the injury, he</p> <p>5 was 27 years old. And looking at his work history and</p> <p>6 comparing that to Dr. Cohen's report, he could have</p> <p>7 earned \$23.77 per hour, which would give him an annual</p> <p>8 income of \$49,442 per year.</p> <p>9 After the accident, now he proved that he</p> <p>10 could earn \$15 per hour. Per year, that's 31,200.</p> <p>11 He is a -- his losses were projected</p> <p>12 through an age of 67, which is his Social Security</p> <p>13 retirement age, which would be 39.89 years into the</p> <p>14 future.</p> <p>15 I used an interest rate, real interest</p> <p>16 rate for discounting to net present value of two and a</p> <p>17 half percent -- I'm wrong -- yeah. And the real wage</p> <p>18 rate growth was -- that I used was 1.12 percent. That</p> <p>19 leaves a net discount rate of 1.38 percent.</p> <p>20 He did not receive fringe benefits, and he</p> <p>21 is self-employed.</p>	<p style="text-align: right;">24</p> <p>1 national average.</p> <p>2 Q Well, if Mr. Liller's capacity or earnings</p> <p>3 capacity prior to this accident was \$23 an hour, would</p> <p>4 it not be significant to you to know why it was that</p> <p>5 he was not earning \$23 an hour?</p> <p>6 A People -- people have different wages per</p> <p>7 hour in different jobs. And the most important thing</p> <p>8 I think here is what he could be earning and not so</p> <p>9 much what he is earning at that moment.</p> <p>10 I think the national average is a better</p> <p>11 indicator of his earning potential than only looking</p> <p>12 at his past earnings.</p> <p>13 Q Well, would you agree with me that wages</p> <p>14 differ as between individuals not based on geographic</p> <p>15 location or the kind of work but also based upon any</p> <p>16 individual's particular skills and qualifications?</p> <p>17 A Correct. Take also into account that his</p> <p>18 earnings will develop over a lifetime. People have an</p> <p>19 earnings profile.</p> <p>20 This is a young individual. And over a</p> <p>21 lifetime, he will have higher earnings than most</p>
<p style="text-align: right;">23</p> <p>1 Q Do you have any information to suggest</p> <p>2 that Mr. Liller was earning \$23 an hour prior to the</p> <p>3 accident in this case?</p> <p>4 A I base my -- the \$23 per hour is based on</p> <p>5 what -- average wages in 2001. And that is something</p> <p>6 you can find on the BLS Government Web site for first</p> <p>7 line supervisors, managers in construction trade.</p> <p>8 That was the kind of job, according to</p> <p>9 Dr. Cohen, that he performed. He did not earn -- we</p> <p>10 did not see records that he was earning \$23 per hour</p> <p>11 before the accident.</p> <p>12 We do know that he was earning \$18 per</p> <p>13 hour in South Carolina.</p> <p>14 Q And is there a reason why you then used</p> <p>15 the \$23 figure rather than the \$18 an hour figure?</p> <p>16 A Yeah. Because that's what we felt was</p> <p>17 the -- or I felt too is the wage that he could earn,</p> <p>18 and that's proven too by what you see right now, that</p> <p>19 he has a person walking with him to keep up his tools</p> <p>20 and stuff, that he was paid \$8 per hour, and he is \$15</p> <p>21 per hour. So, together that comes very close to the</p>	<p style="text-align: right;">25</p> <p>1 likely about the \$23.77.</p> <p>2 Q Did you perform --</p> <p>3 A From experience, this is an average.</p> <p>4 Q Understood.</p> <p>5 Did you perform any investigation of your</p> <p>6 own to determine why it was that Mr. Liller was</p> <p>7 earning \$18 an hour in comparison with the national</p> <p>8 average of \$23 an hour?</p> <p>9 A No.</p> <p>10 Q Did you ask Mr. Liller?</p> <p>11 A No.</p> <p>12 Q Have you performed any investigation with</p> <p>13 respect to what the average wage for a comparable</p> <p>14 position would be in Oakland, Maryland?</p> <p>15 A Yeah. But I did not feel that that was</p> <p>16 relevant, because he showed that he could work in</p> <p>17 different locations.</p> <p>18 He also indicated that he was -- wanted to</p> <p>19 go into business for himself. And that could be</p> <p>20 anywhere, which he also proved that he did. He did</p> <p>21 have his own business in South Carolina, if I remember</p>

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<p style="text-align: right;">26</p> <p>1 correctly.</p> <p>2 Q What kind of investigation did you perform</p> <p>3 for -- with respect to Oakland, Maryland?</p> <p>4 A I looked into a database for -- well, I</p> <p>5 assume that's Garrett County?</p> <p>6 Q That's correct.</p> <p>7 A Yeah. I looked in the database for</p> <p>8 Garrett County.</p> <p>9 Q And what did you determine?</p> <p>10 A That wages there were somewhat lower, but</p> <p>11 I do not have the data in front of me. So, I cannot</p> <p>12 tell you. But that's what I remember.</p> <p>13 Q Did you look on a Web site similar to the</p> <p>14 one that you have cited in your report?</p> <p>15 A For Garrett County?</p> <p>16 Q Well, you have --</p> <p>17 A For the area there, no, I don't remember</p> <p>18 doing that.</p> <p>19 Q Well, how did you access that information?</p> <p>20 A Via the Web site, via the computer.</p> <p>21 Q And what Web site was that?</p>	<p style="text-align: right;">28</p> <p>1 office, is that software that you've purchased from</p> <p>2 some third party?</p> <p>3 A Yes.</p> <p>4 Q What's the --</p> <p>5 A Actually, no, I didn't purchase it. It</p> <p>6 was given to me.</p> <p>7 Q Who gave it to you?</p> <p>8 A McCroskey, Bill McCroskey.</p> <p>9 Q Who is Bill McCroskey?</p> <p>10 A He is the developer of the software.</p> <p>11 Q And does he have a trade name or a</p> <p>12 business name?</p> <p>13 A Yeah. Can you hang on?</p> <p>14 Q Sure.</p> <p>15 (Pause in the proceedings.)</p> <p>16 THE WITNESS: I thought he did, but he</p> <p>17 goes by his name, Billy J. McCroskey,</p> <p>18 M-c-C-R-O-S-K-E-Y, Ph.D.</p> <p>19 Q And did he provide you with this program</p> <p>20 free of charge?</p> <p>21 A Yes.</p>
<p style="text-align: right;">27</p> <p>1 A BLS-dot-GOV.</p> <p>2 Q And that's the Web site that you have</p> <p>3 cited in your report?</p> <p>4 A Correct.</p> <p>5 Q And then I'm asking you did you access a</p> <p>6 different Web site in order to perform your</p> <p>7 investigation with respect to Garrett County?</p> <p>8 A No. I accessed a computer program.</p> <p>9 Q And that's a computer program that you</p> <p>10 have in your office?</p> <p>11 A Correct.</p> <p>12 Q Does that print out?</p> <p>13 A You cannot print out the pages on which</p> <p>14 you get those wages, no.</p> <p>15 Q You're not able to print from that</p> <p>16 software program?</p> <p>17 A No. No. You can print an analysis, but</p> <p>18 you cannot print the exact wages that you do. So, you</p> <p>19 write that down.</p> <p>20 Q I see.</p> <p>21 The database that you maintain in your</p>	<p style="text-align: right;">29</p> <p>1 Q Does Mr. McCroskey, does he engage in a</p> <p>2 profession of his own?</p> <p>3 A Yeah. He's a -- he does vocational and</p> <p>4 economic assessments.</p> <p>5 Q Work similar to yours and Dr. Cohen's?</p> <p>6 A Correct.</p> <p>7 Q Why would --</p> <p>8 A He's a well-regarded person in the field.</p> <p>9 Q I understand.</p> <p>10 Why would Mr. McCroskey give you what</p> <p>11 sounds to be a fairly valuable piece of work product</p> <p>12 to use free of charge?</p> <p>13 A Because he wants to sell it, and I</p> <p>14 participated in a contest, and I won. He gave it to</p> <p>15 me free of charge for that reason.</p> <p>16 Q I see.</p> <p>17 And is Mr. McCroskey now selling the</p> <p>18 software to other persons?</p> <p>19 A Yes.</p> <p>20 Q Like yourself and Dr. Cohen?</p> <p>21 A Yes.</p>

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<p style="text-align: right;">30</p> <p>1 Q Does the software have a name?</p> <p>2 A It's called MVQS Rehabilitation</p> <p>3 Economists.</p> <p>4 Q And is that software that's marketed</p> <p>5 strictly to professionals in the Pennsylvania,</p> <p>6 Mid-Atlantic area, or is it a nationwide software?</p> <p>7 A It's a nationwide software.</p> <p>8 Q Would it be possible to access information</p> <p>9 about wages in Oakland, Maryland, via any source other</p> <p>10 than this software program?</p> <p>11 A Yes.</p> <p>12 Q How would you do that?</p> <p>13 A Clicking on the right areas.</p> <p>14 Q I'm sorry?</p> <p>15 A Clicking on the right areas. What you</p> <p>16 will find, though, is that the wages are approximately</p> <p>17 I think 22-1/2 dollars per hour in Garrett for similar</p> <p>18 job, for like a supervisor in construction trades.</p> <p>19 Q When you say by clicking on the right</p> <p>20 areas, do you mean within a software program?</p> <p>21 A Yes.</p>	<p style="text-align: right;">32</p> <p>1 job classification?</p> <p>2 A I based my opinion on Dr. Cohen's report.</p> <p>3 Q And Dr. Cohen had advised that the most</p> <p>4 appropriate job classification was a first line</p> <p>5 supervisor or manager?</p> <p>6 A Of construction trade, yes.</p> <p>7 Q Would you agree with me that the</p> <p>8 construction trade in general is sensitive to economic</p> <p>9 ebbs and flows?</p> <p>10 A Yes.</p> <p>11 Q And would you agree with me that the wages</p> <p>12 that construction workers earn are similarly tied to</p> <p>13 the state of the economy?</p> <p>14 A Yes.</p> <p>15 Q Would you agree with me that at many</p> <p>16 times, construction workers will not work at all</p> <p>17 because there may not be work available?</p> <p>18 A Yes.</p> <p>19 Q Do you have any opinions with respect to</p> <p>20 whether or not Bruce Liller's future projected</p> <p>21 earnings capacity would be affected by any of those</p>
<p style="text-align: right;">31</p> <p>1 Q I was asking if there would be any source</p> <p>2 of that information other than the software program?</p> <p>3 A Oh, yeah. He gets -- yeah. The Bureau of</p> <p>4 Labor Statistics. That's his source. So, it's the</p> <p>5 same data, but he gets the rougher, the original data</p> <p>6 that also the Bureau of Labor Statistics uses.</p> <p>7 Q And the Bureau of Labor Statistics are the</p> <p>8 statistics that are reported in the</p> <p>9 WWW-dot-BLS-dot-GOV Web site?</p> <p>10 A That is correct.</p> <p>11 Q Would it be possible to obtain information</p> <p>12 about wages in Oakland through any other method?</p> <p>13 A I wouldn't know how. I typically use the</p> <p>14 Web site, the BLS-dot-GOV Web site for my information.</p> <p>15 I think that's a Government source that is reliable.</p> <p>16 Q And the wage rate that you quoted for</p> <p>17 Bruce Liller is for first line supervisors/managers of</p> <p>18 construction trade; is that correct?</p> <p>19 A That is correct.</p> <p>20 Q What information did you elicit from</p> <p>21 Mr. Liller to suggest that that was the appropriate</p>	<p style="text-align: right;">33</p> <p>1 ebbs and flows we just discussed?</p> <p>2 A Sure.</p> <p>3 Q What are those opinions?</p> <p>4 A They will be affected by ebbs and flows,</p> <p>5 his earnings, but not his earning capacity.</p> <p>6 Q So, his earning capacity would remain at</p> <p>7 the same figure?</p> <p>8 A Well, yeah. If the job is available, he</p> <p>9 could do it, yes.</p> <p>10 Q But you would agree with me that in</p> <p>11 reality, if this accident had not happened, the job</p> <p>12 may not have been available? Would you agree with me</p> <p>13 there, Mr. Walstra?</p> <p>14 A You mean at some point in time that he may</p> <p>15 have less work? Yeah. I mean, he was -- he was</p> <p>16 self-employed, and the number of hours that he will</p> <p>17 work will be going up and down, yes. Some weeks he</p> <p>18 may work maybe 70 hours and another week he may work</p> <p>19 30 hours.</p> <p>20 Q And that's true regardless of whether or</p> <p>21 not he had been involved in this accident; is that</p>

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<p style="text-align: right;">34</p> <p>1 correct?</p> <p>2 A That is correct.</p> <p>3 Q Do you have any information with respect</p> <p>4 to Mr. Liller's personal spending habits?</p> <p>5 A No.</p> <p>6 Q Do you have any information with respect</p> <p>7 to -- again, we're talking about Bruce Liller at this</p> <p>8 point -- with respect to any health conditions which</p> <p>9 Mr. Liller may suffer from which are unrelated to this</p> <p>10 accident?</p> <p>11 A No.</p> <p>12 Q Do you have any information --</p> <p>13 A I'm not a medical doctor. So, I would not</p> <p>14 be able to incorporate that anyway.</p> <p>15 Q Well, would it be significant to you if</p> <p>16 you learned, for example, that a person you were</p> <p>17 evaluating had a terminal condition?</p> <p>18 A If a doctor would state to me that this</p> <p>19 person is going to die in five years, then that would</p> <p>20 make a difference if the doctor would tell me that.</p> <p>21 But this is a hypothetical. Would tell me</p>	<p style="text-align: right;">36</p> <p>1 Q I understand.</p> <p>2 A So, in other words, I cannot do anything</p> <p>3 with that unless there's another person who can make a</p> <p>4 statement about that.</p> <p>5 Q I understand.</p> <p>6 When you met with Bruce Liller for an hour</p> <p>7 or so at the time that you prepared this report, did</p> <p>8 you ask him any questions with respect to his health</p> <p>9 other than any conditions which he feels are related</p> <p>10 to this accident?</p> <p>11 A No.</p> <p>12 Q Have we discussed all the opinions that</p> <p>13 you hold with respect to Bruce Liller at this point,</p> <p>14 Mr. Walstra?</p> <p>15 A We have not discussed the numbers, if</p> <p>16 that's what you're referring to.</p> <p>17 Q Those are contained within your report?</p> <p>18 A They are in the report.</p> <p>19 Q Do you hold any opinions with respect to</p> <p>20 this case that are not contained within your report?</p> <p>21 A No.</p>
<p style="text-align: right;">35</p> <p>1 that it's not related to the incident, yeah, that</p> <p>2 might affect it. But that kind of information was not</p> <p>3 available to me.</p> <p>4 Q Why was it not available?</p> <p>5 A I had not heard of this. It's not</p> <p>6 available. I have not -- if you say he had a terminal</p> <p>7 condition --</p> <p>8 Q I'm not suggesting he had a terminal</p> <p>9 condition.</p> <p>10 A -- this is the first that I'm hearing of</p> <p>11 it.</p> <p>12 Q I'm not suggesting he had a terminal</p> <p>13 condition.</p> <p>14 But would it be significant to you to</p> <p>15 learn if a hypothetical person had one?</p> <p>16 A If the -- yeah, it would be if that would</p> <p>17 affect -- but then you need -- I need another report.</p> <p>18 I need somebody, a medical doctor or a vocational</p> <p>19 expert indicating to what extent that disease that he</p> <p>20 had prior to the accident would affect his earning</p> <p>21 capacity.</p>	<p style="text-align: right;">37</p> <p>1 Q About how much time would you estimate</p> <p>2 that you spent in the preparation of the report with</p> <p>3 respect to Bruce Liller?</p> <p>4 A Let me look at the -- I'm looking for my</p> <p>5 invoice. That's why I'm not answering.</p> <p>6 Q Take your time.</p> <p>7 A I had it on my desk. Bruce Liller is five</p> <p>8 hours.</p> <p>9 Q Does that include the initial hour that</p> <p>10 you spent meeting?</p> <p>11 A That includes interviewing, analysis,</p> <p>12 review of reports and writing the report.</p> <p>13 Q And other than Dr. Cohen's report, the</p> <p>14 W-2s, or, I'm sorry, the tax returns which you have in</p> <p>15 your file and your notes, did you review any other</p> <p>16 materials in connection with the preparation of your</p> <p>17 report?</p> <p>18 A No.</p> <p>19 Q Do you know whether you will be called</p> <p>20 live to testify at the trial of this case?</p> <p>21 A If I know, is that what you're asking?</p>

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<p style="text-align: right;">38</p> <p>1 Q Yes. Do you know?</p> <p>2 A No, I don't know.</p> <p>3 Q Have you been asked to perform any</p> <p>4 additional evaluation or prepare any addenda to your</p> <p>5 report?</p> <p>6 A No.</p> <p>7 Q I think that's probably all I have for</p> <p>8 Bruce.</p> <p>9 A Okay.</p> <p>10 Q Turning now to the report which you</p> <p>11 prepared for Michael Liller. If I could just take a</p> <p>12 second, I'm going to have that marked, Mr. Walstra.</p> <p>13 MS. LUBINSKI: I think that's Number 3.</p> <p>14 (Walstra Deposition Exhibit Number 3 was</p> <p>15 marked for purposes of identification.)</p> <p>16 Q Do you have that in front of you?</p> <p>17 A I have.</p> <p>18 Q How much time did you spend in the</p> <p>19 preparation of the Michael Liller report?</p> <p>20 A I think that was seven hours.</p> <p>21 Q And that included --</p>	<p style="text-align: right;">40</p> <p>1 A 2002, 2000, 1999 and 1998. No. Sorry.</p> <p>2 I'm looking here at Bruce, his returns.</p> <p>3 2000, 2001. Did I say 2002?</p> <p>4 Q No.</p> <p>5 A Let me start again.</p> <p>6 Q Okay.</p> <p>7 A I looked for Michael Liller at 2002, 2001,</p> <p>8 2000, 1999 and 1998.</p> <p>9 Q And the same as we discussed with Bruce</p> <p>10 Liller, have you performed any independent</p> <p>11 investigation into the wage rates for comparable work</p> <p>12 in Oakland, Maryland?</p> <p>13 A Yes, I did. And I accessed the same -- we</p> <p>14 used the earnings that he has right now, but if you</p> <p>15 look at similar jobs in the Oakland area, Oakland and</p> <p>16 Garrett County, then you will find that earnings are</p> <p>17 around what he was earning.</p> <p>18 Q And did you determine that based upon your</p> <p>19 use of the software Mr. McCroskey provided you?</p> <p>20 A Yes. And also the BLS-dot-GOV Web site.</p> <p>21 Q What's the basis for your opinion that the</p>
<p style="text-align: right;">39</p> <p>1 A I do not have the invoice in my file here.</p> <p>2 Q Would that have included the time that you</p> <p>3 spent meeting with the Lillers and reviewing</p> <p>4 Dr. Cohen's report and so forth?</p> <p>5 A Yes.</p> <p>6 Q The fees that you're charging with respect</p> <p>7 to Michael Liller's review and testimony are the same</p> <p>8 as with Bruce Liller's?</p> <p>9 A Yes.</p> <p>10 Q Did you perform any independent</p> <p>11 investigation of Michael Liller's earnings prior to</p> <p>12 the date of this accident?</p> <p>13 A Yes. I knew that he was earning the rate</p> <p>14 of \$12 per hour, which is also indicated in</p> <p>15 Dr. Cohen's report, and I obviously heard the same</p> <p>16 story.</p> <p>17 And -- but now he's earning \$8 per hour.</p> <p>18 Q Have you reviewed any of Mr. Liller's tax</p> <p>19 returns?</p> <p>20 A Yes.</p> <p>21 Q What years?</p>	<p style="text-align: right;">41</p> <p>1 appropriate wage rate for household services is \$5.15</p> <p>2 per hour?</p> <p>3 A That's the minimum wage. It's most likely</p> <p>4 somewhat higher. There's a study, the dollar value of</p> <p>5 a day by economic demographers that publishes that.</p> <p>6 And if you see there, the wage rate for</p> <p>7 administrative tasks that they use as a comparable</p> <p>8 wage rate would be higher than the \$5.15 per hour.</p> <p>9 So, this is conservative.</p> <p>10 Q And what is the basis for your opinions</p> <p>11 with respect to the projected medical expenses for</p> <p>12 Michael Liller?</p> <p>13 A Dr. Cohen indicated that he -- in his</p> <p>14 report that he needs a full neuropsychological</p> <p>15 assessment. He needed psychiatric treatment for his</p> <p>16 depression and anxiety and -- which would be Zoloft.</p> <p>17 And some follow-up treatment, including psychiatric</p> <p>18 office visits once a month for a year, once every</p> <p>19 three months for two additional years.</p> <p>20 He needs psychotherapy and cognitive</p> <p>21 retraining once a week for a year, once every two</p>

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<p style="text-align: right;">42</p> <p>1 weeks for another and once a month for a third year.</p> <p>2 I did not include all the costs that he</p> <p>3 describes. I did get a price for a neurological</p> <p>4 assessment. I just look -- for Zoloft, I looked on</p> <p>5 the Web site. I got a price from one of the people</p> <p>6 that is doing that, a thousand dollars they charge for</p> <p>7 that.</p> <p>8 And the follow-up treatment was based on</p> <p>9 twelve visits at \$80 a year -- \$80 per visit. So,</p> <p>10 that's basically for one year, and I discounted it</p> <p>11 over three years.</p> <p>12 So, I think that the amount would be</p> <p>13 higher than the amount that I have here.</p> <p>14 Q Wow! I've got so many questions about</p> <p>15 that, I'm not sure where to start.</p> <p>16 <u>Do you know if any physician has</u></p> <p>17 <u>prescribed any of these treatments or services for</u></p> <p>18 <u>Michael Liller?</u></p> <p>19 A I do not know at this point. I do --</p> <p>20 psychotropic medication, for example, Zoloft. So, it</p> <p>21 could be a different kind of medication. And I base</p>	<p style="text-align: right;">44</p> <p>1 available?</p> <p>2 A That's right.</p> <p>3 Q Would you agree with me that within those</p> <p>4 classes of medications there are I guess what you</p> <p>5 might call brand name drugs and generic drugs?</p> <p>6 A Uh huh. Correct.</p> <p>7 Q Would you agree with me that generic</p> <p>8 medications would be cheaper?</p> <p>9 A That's correct.</p> <p>10 Q Did you check the price of the generic</p> <p>11 medication?</p> <p>12 A No, I did not.</p> <p>13 Q How did you determine the cost of a full</p> <p>14 neuropsychological assessment?</p> <p>15 A We had a quote here from a</p> <p>16 neuropsychological psychologist</p> <p>17 Q Who was that?</p> <p>18 A -- I don't have it in front of me. I'm</p> <p>19 sorry.</p> <p>20 Q Would you agree with me that different</p> <p>21 neuropsychologists might charge different sums for an</p>
<p style="text-align: right;">43</p> <p>1 this on Dr. Cohen's report that he needs that.</p> <p>2 Q I understand.</p> <p>3 You would agree with me, though, that</p> <p>4 Dr. Cohen is not an M.D.?</p> <p>5 A Right.</p> <p>6 Q And you would agree with me that an M.D.</p> <p>7 would have to prescribe Zoloft or any other</p> <p>8 psychotropic medication?</p> <p>9 A I don't know. I mean, you should discuss</p> <p>10 that with Dr. Cohen.</p> <p>11 Q Would you agree with me that because</p> <p>12 you've done obviously some research into what the cost</p> <p>13 of this treatment would be --</p> <p>14 A Yeah.</p> <p>15 Q -- would --</p> <p>16 A Yeah, I have this from the Web site called</p> <p>17 Popular Prescription Drugs-dot-COM.</p> <p>18 Q Would you agree with me that Zoloft is but</p> <p>19 one example of a number of different classes of --</p> <p>20 A That's right.</p> <p>21 Q -- psychotropic medications which would be</p>	<p style="text-align: right;">45</p> <p>1 assessment?</p> <p>2 A Could be.</p> <p>3 Q Do you think it would have been prudent to</p> <p>4 check the cost for such an assessment with more than</p> <p>5 one provider?</p> <p>6 A Sure. Yeah.</p> <p>7 Q And the follow-up treatment for three</p> <p>8 years which you've reduced to present value of \$609,</p> <p>9 is that the course of follow-up psychotherapy that</p> <p>10 you're referring to?</p> <p>11 A No. That -- let me see.</p> <p>12 Yeah. He needs psychotherapy and</p> <p>13 cognitive retraining once a week for a year, yes.</p> <p>14 Q What is the follow-up treatment for three</p> <p>15 years that you're referring to?</p> <p>16 A Well, I just -- what I did is I did that</p> <p>17 12 times 80 and discounted that to present value. And</p> <p>18 I do not have a price for the other expenses.</p> <p>19 So, therefore -- and the psychotropic</p> <p>20 medication is calculated over three years. So,</p> <p>21 therefore, this is, you know, three years.</p>

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